

REMARKS/ARGUMENTS

Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29-32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65 were pending at the time of the mailing of the outstanding Office Action. By this amendment, claim 1 has been amended. New claims 67-85 have been added.

Claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47, and 48 stand rejected under 35 U.S.C. § 102(e) as being anticipated by or under 35 U.S.C. § 103(a) as obvious over Alt DE19834956 (hereinafter "Alt"). Claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56, stand rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer DE19840645 (hereinafter "Hoefer"). Claims 57, 58, 60, 61, 63, and 64 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer and further in view of Kveen US 6,261,319 (hereinafter "Kveen"). Claim 65 stands rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Kveen.

An interview was conducted by telephone between the undersigned attorney and Examiner Michael Thaler on 24 January 2006.

Interview summary

The undersigned attorney wishes to thank the Examiner for the courtesies extended during the telephone interview of 24 January 2006. During that interview, distinctions between the Alt reference and the present invention as recited in claim 1 were discussed, in particular, the nature of the curvature of the bar element portions. The Examiner indicated that amending claim 1 to recite that the first and second bar elements have an identical shape would distinguish over Alt. The support in the specification for such an amendment was also discussed. Agreement on the claims was not reached.

Remarks

The Examiner maintains that Alt anticipates the present invention because the bar element portions of Alt extend in a concave or convex manner. The Applicants continue to maintain that the Examiner is not giving proper consideration to all of the elements recited in Claim 1. Claim 1 does not merely recite that the bar element portions are all concave or convex, but that they are *identically* concave or convex. The Examiner maintains that this wording, “does not require the radius of curvature of the bar element portions to be identical. Nor does it require the length of the bar element portions to be identical.” The Applicants respectfully maintain that the Examiner is failing to properly consider the meaning of the word “identically” as recited in the claim. Nevertheless, claim 1 has been amended to recite that all of the first and second bar element portions of the first annular support portion extend to an identical extent in the longitudinal direction. Support for this amendment may be found in the Figures. Alt does not teach or suggest such a stent design. Instead, Alt provides a stent wherein the bar elements that share a turning point extend in the longitudinal direction a different amount. That is, of the two bar element portions of Alt that share a turning point, a first bar element portion will extend in one direction more than the second bar element portion. If one were to further consider the opposite longitudinal direction, it would be seen that this arrangement is reversed and the second bar element portion extends further than the first bar element portion in the second longitudinal direction. In either case, each bar element portion does not extend the same amount in the longitudinal direction as the other bar element portion sharing a common turning point. Because this feature is neither taught nor suggested by Alt, claim 1 and those claims that depend from and contain all the limitation of claim 1, patentably distinguish over Alt. Withdrawal of the rejection of claims 1, 2, 5, 6, 9, 10, 20, 21, 23, 24, 26, 27, 47, and 48 under 35 U.S.C. § 102(e) as being anticipated by or under 35 U.S.C. § 103(a) as obvious over Alt is respectfully requested.

Claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56, stand rejected as being as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer. In the outstanding office action, the Examiner did not address any of the

Applicants' previous comments regarding this rejection of these claims but only repeated his previous rationale. The Applicants reiterate their previous remarks regarding this rejection.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. There must also be a reasonable expectation of success and the prior art reference or references must teach or suggest all of the claim limitations. (MPEP § 2143.) The Applicants continue to maintain that these requirements have not been met.

As stated in the previous response, the invention of Hoefer, as described by U.S. Pat. No. 6,602,285 (hereinafter "the '285 patent"), which is believed to be the U.S. equivalent of Hoefer (DE19840645), provides a stent that comprises a web structure of neighboring web patterns. These web patterns comprise adjoining webs and each web comprises three portions ('285, abstract). Such an arrangement can not be said to teach or suggest bar element portions that are entirely concave over their entire length or entirely convex over their entire length, because they are a series of pieces not a single curved piece and the '285 patent provides no requirement that any of the pieces be curved. In fact, the '285 patent provides that a preferred embodiment contains web portions that are straight with obtuse angles being formed at the junctions of the portions (column 1, lines 56-60). Therefore, the '285 patent (and therefore also Hoefer) actually teaches away from a stent containing bar element portions that extend in the longitudinal direction curvedly, and neither Alt nor Hoefer teach or suggest first and second bar element portions that adjoin at a turning point and that extend curvedly in the longitudinal direction of the stent in an identical concave or convex arcuate manner.

Additionally, claim 1 has now been amended to recite not only that the first and second bar element portions extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner, but that all of the first and second bar

element portions of the first annular support portion extend to an identical extent in the longitudinal direction. None of the cited prior art teaches or suggests the claim limitations of claim 12.

Furthermore, the Examiner maintains that Hoefer's arrangement "has the apparent advantage of increasing its flexibility of the stent in various directions." The Applicants continue to maintain that an "apparent" advantage is insufficient under 35 U.S.C. § 103(a) to establish sufficient motivation, with a reasonable expectation of success, to combine the teachings of Alt and Hoefer to arrive at the present invention. It is further respectfully maintained that the Examiner is impermissibly using hindsight to combine the elements of these references to arrive at the present invention. Therefore claims 12, 13, 15-18, 29-32, 34, 35, 37-40, 42, 43, 45, 46, 49, 50, 52, 53, 55 and 56 patentably distinguish over Alt and Hoefer, either alone or in combination.

Claims 57, 58, 60, 61, 63, and 64 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over Alt in view of Hoefer and further in view of Kveen. These claims patentably distinguish over Alt, Hoefer and Kveen, alone or in combination, because none of these references teach or suggest first and second bar element portions that adjoin at a turning point and that extend in the longitudinal direction of the stent curvedly in an identical concave or convex arcuate manner, and because none of these references teach or suggest all of the first and second bar element portions of the first annular support portion extend to an identical extent in the longitudinal direction. As stated in the previous response, the Examiner has not established a reasonable expectation of success in combining the teachings of these references as discussed above. Also for these reasons, claim 65 patentably distinguishes over Alt and Kveen.

Therefore, the Applicants maintain that claims 1, 2, 5, 6, 9, 10, 12, 13, 15-18, 20, 21, 23, 24, 26, 27, 29-32, 34, 35, 37-40, 42, 43, 45-50, 52, 53, 55-58, 60, 61, 63-65 patentably distinguish over the prior art. Reconsideration and allowance of these claims is respectfully requested.

New claims 67-72 provide additional distinctions over the cited prior art. Claim 67 recites the pattern of attachment of connecting bars shown in Fig. 1. In this arrangement, the annular support portion follows a repeating pattern described with reference to contact of turning points to a connecting bar. The pattern consists of contact of at least two successive turning points with connecting bars, followed by at least two turning points that do not contact a connecting bar. None of the cited prior art teaches or suggests a stent having all of the limitations of claim 67. Claims 68-72 provide additional elements not taught or suggested by the prior art. Support for these claims may be found in claims 10, 12, 15, and 31.

New claims 73-78 also provide additional distinctions over the cited prior art. Claim 73 recites that all of the turning points on a first longitudinal end of the first annular support portion contact substantially rectilinear first connecting bars and that these connecting bars additionally contact turning points of an adjoining annular support portion. Support for this claim may be found in Figs. 2 and 3 and the description of connecting bars 9 in paragraphs 0036 and 0044. Claim 74 also recites that the stent additionally comprises V-shaped connecting bars as also shown in and described with reference to Fig. 2 and 3 as connecting bars 4'. Claims 75-78 further recite variations in the direction of curvature of the bar element portions as previously recited in claims 10, 12 and 15.

Finally, new claims 79-85 additionally recite that the direction of curvature of the bar element portions alternates in opposite directions from one annular support portion to another adjoining annular support portion. Support for this claim may be found in Fig. 4. Claims 80-85 also additionally recite various configurations of the connecting bars as also disclosed in the Figures and claims 56-57.

The Applicants respectfully maintain that claims 67-85 are not taught or suggested by the prior art. Allowance of these added claims is also respectfully requested.

The outstanding Office Action was mailed on 4 October 2005. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, a petition for an extension of time (two-months) is enclosed with this response. In this response, claims no additional claims have been cancelled and claims 67-85 have been added. As a result, 66 claims, 4 of which are independent claims, are currently pending. 66 total claims had previously been paid for in the present application. Therefore, an additional fee for one independent claim in excess of three is believed to be due. A check in the amount of \$650 is enclosed herewith in satisfaction of these fees. No other fees are believed to be due. However, in the event that any fee required with the filing of this response is insufficient the Commissioner is authorized to charge any fee or to credit any overpayment associated with the filing of this paper to Deposit Account 15-0450.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Cunniff", with a stylized flourish at the end.

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